	OAH 3-2500-17511-2 MPUC No. P421/AM-06-713

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of Qwest Corporation's Application for Commission Review of TELRIC Rates pursuant to 47 U.S.C. § 251	**FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judges Kathleen D. Sheehy and Steve M. Mihalchick on a stipulated record. The OAH record closed upon receipt of reply briefs on March 3, 2009.

Eric F. Swanson, Winthrop & Weinstine, 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402-4629; and Jason Topp, Qwest Corporation Law Department, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, appeared for Qwest.

Dan Lipschultz, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4129, appeared for the CLEC Coalition.[1]

Linda S. Jensen, Assistant Attorney General, Suite 1400, 445 Minnesota Street, St. Paul, MN 55101-2131, appeared for the Department of Commerce (Department).

Kevin O'Grady appeared for the staff of the Public Utilities Commission.

STATEMENT OF ISSUES

1. Whether Qwest must offer a measured usage rate option for the collocation DC power plant and, if so, what that just and reasonable cost-based rate should be;

2. What rates and rate structure Qwest should use for collocation transfer of responsibility under Section 8.14 of Exhibit A; and

[1] The CLEC Coalition is composed of Eschelon Telecom, Inc.; Integra Telecom of Minnesota, Inc.; McLeodUSA Telecommunications Services, Inc.; POPP.com, Inc.; DIECA Communications, Inc., d/b/a Covad Communications Company; TDS Metrocom, Inc.; and XO Communications, Inc.

3. Whether Qwest should offer cageless collocation without purchase of minimum electric power and electric power cables.

Based upon all the files, records, and proceedings herein, the Administrative Law Judges make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural Background

1. The Telecommunications Act of 1996 requires local exchange carriers to facilitate local competition by sharing their networks with competitors. Under 47 U.S.C. § 251(c)(3), incumbent local exchange carriers (ILECs) must provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.[2] A state commission's determination of just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.[3] Pursuant to this statutory mandate, the Federal Communications Commission (FCC) has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.[4]

2. The Commission has examined and set Qwest's rates for unbundled network elements (UNEs) in several previous dockets. The initial UNE cost case was Docket No. P421/CI-96-1540, which established rates for Qwest UNEs including loops, switching, transport, and collocation. In that case, the Commission set collocation rates based on the MCI/AT&T Collocation Cost Model (CCM).[5]

3. During the Section 271 process, the Commission reviewed certain rates in Docket No. P421/C1-01-1375 for the purpose of determining Qwest's compliance with 47 U.S.C. § 271; in that case, rates for certain new collocation

[2] 47 U.S.C. § 251(c)(3).
[3] 47 U.S.C. § 252(d)(1).
[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket Nos. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶¶ 674-79 (Aug. 8, 1996), *aff'd in part and rev'd in part, Iowa Utils. Bd. v. FCC*, 525 U.S. 1133 (1999) (*Local Competition Order);* 47 C.F.R. §§ 51.501, *et. seq.*
[5] *In the Matter of A Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, Docket No. P421/CI-96-1540, Order Resolving Cost Methodology, Requiring Compliance Filing, and Initiating Deaveraging Proceeding (May 3, 1999); Order Granting Reconsideration, Setting Prices and Ordering Compliance Filing (Mar. 15, 2000) (*1540 Docket*).

elements were set using either Qwest's Collocation Model, with certain changed assumptions, or the MCI/AT&T CCM, with appropriate modifications.[6]

4. In October 2003, Qwest filed a petition in Docket No. P421/AM-03-1754, seeking approval of prices for certain elements not addressed in a previous cost docket. That matter was resolved by agreement of the parties, and the settlement was approved by the Commission on August 20, 2004.[7]

5. Qwest initiated this proceeding on May 16, 2006, by filing an application to change many of its rates for unbundled network elements (UNEs) and all of the collocation rates previously approved by the Commission. The Commission issued a Notice and Order for Hearing on September 15, 2006. After engaging in extensive discovery and filing multiple rounds of testimony, the parties resolved the vast majority of disputed rates at issue in this proceeding, with the exception of the three issues identified above. The parties further stipulated that the record of this proceeding includes the Party submissions, ALJ and Commission Notice and Orders, and other documents reflected on Attachment 2 to their stipulation; they also agreed to supplement the record with one round of supplemental testimony, to waive cross-examination, and to submit the remaining issues for decision on the record after briefing. The Commission approved the terms of the stipulation and required the parties to file a price list and element descriptions matrix.[8] The Commission approved those filings on February 19, 2009.[9]

6. Qwest has the burden of proving that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in 47 U.S.C. § 51.505(e) and § 51.511.

Measured Usage Rate for DC Power Plant

7. There are three different UNEs used for access to DC Power Plant: power plant, power usage, and power feeders. The "DC Power Plant" element is intended to recoup costs Qwest incurs in installing and maintaining the equipment used to convert alternating current (AC) purchased from a utility to the direct current (DC) that is necessary to operate most telecommunications

---

[6] *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices*, Order Setting Prices and Establishing Procedural Schedule, Docket Nos. P421/CI-01-1375 (Oct. 2, 2002), *appeal denied*, *Qwest Corp. v. Koppendrayer*, 2004 WL 768913 (D. Minn. 2004), *aff'd*, 436 F.3d 859 (8th Cir. 2006) (*1375 Docket*).

[7] *In the Matter of Qwest Corporation's Request for Approval of Unbundled Network Elements (UNEs)*, Docket No. P421/AM-03-1754, Order [Approving Interim Rates] (Aug. 20, 2004) (*1754 Docket*).

[8] *In the Matter of Qwest's Application for Commission Review of Qwest's TELRIC Rates Pursuant to 47 U.S.C. § 251*, Docket No. P421/AM-06-713, Stipulation and Agreement (June 25, 2008); *id*., Order Approving Stipulation, With Clarification (Sept. 18, 2008).

[9] *Id*., Order Approving Price List and Element Descriptions Matrix with Clarifications and Revisions (Feb. 19, 2009).

equipment. "Power Usage" is the element meant to recoup the costs Qwest incurs in purchasing AC power from a utility that is supplied to collocators. "Power Feeders" are the cables that carry power from the Qwest power plant to the CLEC collocation space. Feeders are available in various sizes from 20 to 200 amps.[10]

8. Of these elements, only an optional rate for "DC Power Plant" is at issue in this case. Power plant consists of the backup power generator, rectifiers, power boards, battery distribution frame boards (BDFBs), batteries, and the cable and support structure that connects all these components. The power plant generates and stores power for use during potential outages, converts standard AC power into the DC power used for telecommunications equipment, and distributes the power to those areas of the central office where the power is to be used. The recurring charge currently approved reflects the capital and maintenance costs associated with maintaining power plant and is based on the size of the power feed requested by the CLEC.[11] This rate design assumes that if a CLEC orders a 20-amp power feed to connect the DC power plant to its collocation, the CLEC will use 20 amps of power.[12]

9. The rate set for DC Power Plant in the *1540 Docket* using the MCI/AT&T collocation model was a monthly recurring rate of $4.38 per amp for caged collocations and $4.93 per amp for cageless and virtual collocations.[13] This was a capacity-based rate (per amp delivered over the power cables) as opposed to a usage-based rate.[14] The rate for AC Usage was $2.03 per amp per month.[15] These rates were not changed in the *1375 Docket* or the *1754 Docket.*

10. Although a rate in single digits may sound low, the cost can be substantial when multiplied by the number of amps in the power cable. DC power is the single largest recurring cost for collocators.[16]

11. In this proceeding, Qwest proposed using its Collocation Model to price all collocation elements. Using its model, Qwest proposed that the monthly recurring rate for DC Power Plant for all types of collocations be set at $10.39 per amp ordered, for collocations using power cables of less than 60 amps; for collocations using cables of 60 amps or more, the proposed rate was $5.76 per amp ordered. The proposed rate for AC Usage was $2.54 for collocations using power cables of less than 60 amps and $5.09 for collocations using power cables of 60 amps or more.

---

[10] Legursky Direct at 49-50.
[11] *Id*. at 50-52; Qwest UNE Descriptions Matrix (attached to Commission Order of 2/19/09).
[12] Legursky Surrebuttal at 8.
[13] Compliance Filing, *1540 Docket* (June 13, 2000).
[14] ALJ Report ¶ 243, *1540 Docket*.
[15] Compliance Filing, *1540 Docket.* The AC power usage rate is not at issue in this case, but is included here because it impacts the total power charge.
[16] Direct Testimony of Starkey-Morrison at 212; Surrebuttal of Starkey-Morrison at 5.

12. The stipulated rate for DC Power Plant, approved by the Commission in this proceeding, is a monthly recurring rate of $5.92 per amp, charged per size of feeder cable, for less than 60 amps; it is $5.42 per amp for collocations using feeder cable of 60 amps or more.

13. Qwest contends that the stipulated rate is the only appropriate rate for DC Power Plant. Qwest points out that this rate structure provides the basis for the current approved rates in Minnesota and is used in all 14 states of Qwest's region.[17] Qwest concedes, however, that approximately 20 states offer a measured rate.[18]

14. The CLEC Coalition and the Department contend that, in addition to the stipulated rate, the Commission should establish an optional measured rate that is based on a CLEC's actual usage of DC Power Plant. They contend that a rate that is based on the size of the power cables ordered is or may be excessive, because for safety reasons the power cables connecting the DC Power Plant to a collocation are sized to different engineering standards than is the plant itself. The CLECs seek to establish a rate that is based on their actual usage of the DC Power Plant, as opposed to the size of the cables connecting the plant to their collocations.

15. Qwest follows standard engineering principles in the telecommunications industry, which call for DC power plant components to be sized based on what is known as cumulative List 1 drain within a central office—that is, the electrical load demanded by all equipment in the central office that must be powered at peak operating levels under normal operating conditions (the busy hour).[19] Power delivery cables, on the other hand, are sized for safety reasons based on what is known as List 2 drain—the current that is required for projected peak under a worst-case scenario in which Qwest's power plant experiences a significant voltage drop.[20] Cables are sized larger than the power

[17] Much of the precedent Qwest cites in support of this rate structure was developed in proceedings in which CLECs argued that Qwest's "measured power amendment" to their interconnection agreements applied to power plant as well as power usage. Based on contract principles, these commissions generally concluded that the amendment applied only to power usage. Some commissions also found that this rate structure was not discriminatory, and others suggested it would be more appropriate to address the issue in a cost case as opposed to a complaint proceeding.

[18] Supplemental Testimony of Million at 5. According to Qwest's research, the rates in those states range from $7.24 to $20.34 per amp used. It is unclear from Qwest's testimony whether these are rates for DC power plant only or if they include power usage.

[19] Direct Testimony of Starkey-Morrison at 199-202 (citing to Qwest Technical Document REGN 790-100-655G and Bellcore Technical Document No. 790-100-656). In addition, Mr. Morrison worked as a central office engineer for Qwest for many years and had responsibility for sizing DC power plant. In his 22 years as a central office engineer with Qwest, DC power plant was sized based on List 1 drain. *See id*. at 214-15.

[20] *Id*. at 204.

plant so that the power plant cannot generate enough power to overheat the cables and potentially cause fires or service interruptions.[21]

16. Qwest has acknowledged that it designs power plant infrastructure based on List 1 drain, but it maintains that it does so only for its own equipment. It has argued that because Qwest does not know and cannot reasonably forecast the draw that CLEC equipment will take, Qwest uses the size of the power cables ordered by CLECs to size the power plant capacity made available to CLECs.[22] Qwest maintains that it "reserves" the capacity ordered by CLECs by sizing power plant to include existing peak drain, plus Qwest forecasted growth, plus all ordered amounts from CLECs (based on cable size).[23]

17. Power plant in Qwest central offices is a shared resource.[24] Qwest cannot "reserve" power plant capacity except by adding capacity that would be equally available to all users.[25] Qwest does not ask CLECs to forecast usage or to provide List 1 drain information on collocation applications.[26]

18. It is difficult to tell from the record whether Qwest affirmatively sizes DC power plant based on CLEC orders for power cables or whether its power plant capacity is the result of other factors. Most collocations were placed in Qwest central offices in the 1999 timeframe; notably, all 41 collocations Qwest used to model its power plant costs were built before 1999. As Qwest's witness admits, power plant components were likely put into service long before a collocated CLEC ever drew any power.[27] Since then, technological improvements such as the replacement of mechanical switches with digital switches have greatly improved the efficiency of power plants and likely have reduced the need to add capacity.[28]

19. If Qwest is, in fact, sizing power plant infrastructure based on its own List 1 drain requirements and the List 2 drain requirements of CLECs, this practice is inconsistent with industry standards and Qwest's own standards regarding the appropriate sizing of power plant facilities. Such a practice may result in significant oversizing of the power plant and might require CLECs to pay for more DC power plant than they are ever likely to use. In this case, however, it does not particularly matter what Qwest actually does in terms of sizing its power plant. What matters here is whether this assumption is reasonable and appropriate in formulating a TELRIC price for DC power plant.

---

[21] *Id*. at 205, 212.
[22] *Id*. at 203 (citing to Testimony of Curtis Ashton filed in a Colorado docket); Rebuttal Testimony of Ashton at 61.
[23] Rebuttal Testimony of Ashton at 56; Surrebuttal of Ashton at 2-3.
[24] Surrebuttal Testimony of Million at 45; Direct Testimony of Starkey-Morrison at 188-90.
[25] Supplemental Testimony of Million at 2; Direct Testimony of Starkey-Morrison at 197-87; Surrebuttal of Starkey-Morrison at 99-104.
[26] Direct Testimony of Starkey-Morrison at 207 and Ex. 4.
[27] Rebuttal Testimony of Ashton at 54; Surrebuttal Testimony of Starkey-Morrison at 101.
[28] Surrebuttal Testimony of Starkey-Morrison at 101-02.

20. In a typical collocation design, an order for power based on the maximum draw of feeder cables may cost up to 1.5 times more than the per amp used cost.[29] As Qwest points out,[30] there may be instances in which CLECs use either more or less power than would be supported by the size of the power cables they have ordered; this is not, however, an effective argument against a measured usage rate.

21. Public utilities commissions in Texas and Illinois provide for measured usage of DC power plant. In Texas, the commission required SBC to cease assessing DC power plant charges based on the capacity of the power cables connecting the central office power plant to collocations. Subsequently, SBC and various CLECs reached an agreement on a process in which CLECs initially identify the amps of power their equipment will require and then certify, on a semi-annual basis, that their actual measured usage is less than or equal to the requested amperage. The ILEC bills the monthly usage rates based on the requested amperage, and the ILEC has the right to periodically audit CLEC usage and adjust charges based on any discrepancies. Qwest's CLEC affiliate in Texas (QCC) recently opted into this arrangement.[31]

22. In Illinois, the commission established a measured usage rate in its first TELRIC case. When an ILEC attempted to revise the measured usage rate and to substitute a rate based on the number of amps ordered by a CLEC, the commission reaffirmed its prior decision to require that collocation power charges be based on usage and established a system similar to that adopted in Texas involving CLEC certification and ILEC auditing of power usage. Qwest's CLEC affiliate in Illinois advocated in favor of measured DC power plant rates.[32]

23. TELRIC cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of an incumbent's wire centers.[33] TELRIC principles require that costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users.[34] Implementation of a measured-usage rate for DC power plant is technically feasible. It is reasonable and consistent with TELRIC principles for the Commission to require a usage-based rate for DC power plant as an alternative to the stipulated rate.

---

[29] Surrebuttal Testimony of Wes Legursky at 10 & Ex. JWL-14.
[30] Rebuttal Testimony of Curtis Ashton at 57-59.
[31] Direct Testimony of Starkey-Morrison at 221-23 & Exs. 5 & 7. The rate for DC power plant (per amp) in Texas appears to be $7.38 for caged collocation and $7.36 for cageless collocation. *See* Ex. 5 at 15 & 17.
[32] *Id*. at 223-24 & Ex. 6; Surrebuttal of Starkey-Morrison at 91-94 & Ex. 10. In Illinois, power usage and power plant are combined into a single rate element.
[33] 47 C.F.R. § 51.505(b)(1).
[34] 47 C.F.R. § 51.507(c); *Local Competition Order* ¶¶ 753, 757.

24. The parties agree that a measured usage rate can be developed by applying a utilization factor to the stipulated rate.[35]

25. A utilization factor, also known as a fill factor, is an expression of the difference between the facilities actually used and the facilities in place.[36] The purpose of a utilization factor is to estimate the total available capacity likely to be used on average, so that the cost of an entire facility can be recovered over this amount of usage.[37] With regard to DC power plant, the appropriate formula for determining a utilization factor is: average power usage drawn by all plant users under normal operating conditions/total power plant capacity.[38]

26. Qwest proposes a utilization factor of 43%. Qwest originally advocated application of this fill factor to the stipulated rates plus some unspecified amount of additional cost, resulting in a rate of $18.10 per amp for less than 60 amps and $13.43 per amp for 60 amps or more.[39] In its brief, Qwest suggested that application of the 43% fill factor to the stipulated rates, with no additional costs, would result in rates of $13.77 and $12.60.[40]

27. It is unclear how Qwest arrived at a 43% utilization factor. Qwest initially maintained that only CLEC usage (not Qwest's) should be considered in developing a utilization factor.[41] Qwest speculated that a fill factor of 44% was used to calculate a per amp used rate in Georgia.[42]

28. Qwest later agreed that a fill factor should be based on the combined usage of Qwest and CLECs divided by total power plant capacity, but it asserted that "total capacity" was not List 1 drain, but rather, the List 1 drain of Qwest's equipment, the List 2 drain associated with CLEC power cable orders, and forecasted power needs.[43] Qwest did not specify the actual number of amps used to calculate a 43% fill factor, but maintained this factor was appropriate based on actual utilization levels of Qwest (63%) and CLECs (24%).[44] Although Qwest now calls a 43% fill a "blended factor" based on the average of these actual utilization levels,[45] Qwest has offered no rationale why the average, as opposed to the combined total usage of 87% for Qwest and CLECs, should be

[35] Rebuttal Testimony of Million at 186; Surrebuttal Testimony of Million at 45-46; Supplemental Testimony of Million at 4-5; Surrebuttal Testimony of Ashton at 3; Surrebuttal Testimony of Starkey-Morrison151-58; Supplemental Testimony of Starkey-Denney at 1-3; Surrebuttal Testimony of Legursky at 8-12; Supplemental Testimony of Legursky at 1-2.
[36] Direct Testimony of Fagerlund at 14.
[37] Surrebuttal Testimony of Starkey-Morrison at 153.
[38] *Id*. at 151-52; Legursky Supplemental Testimony at 2.
[39] Supplemental Testimony of Million at 5.
[40] Qwest Initial Brief at 21.
[41] Surrebuttal Testimony of Million at 47.
[42] *Id*.
[43] Supplemental Testimony of Million at 4.
[44] *Id*.
[45] Qwest Reply Brief at 16.

the utilization factor. Qwest also maintains that its proposed rates for measured usage are consistent with those approved in other states.[46]

29. Qwest's 43% utilization factor "oversizes" the capacity of power plant in the same way that Qwest's collocation model does. Qwest does not address the question why an efficient telecommunications provider would install an asset of that size and use it at such a low rate. The 43% factor advocated by Qwest is both insufficiently supported and inefficiently low, and it should not be used to develop a measured-usage rate. Qwest's proposed rate cannot be justified simply by comparing it to rates set in other states, without knowing what models were used and assumptions were made in setting those rates or whether they are structured to include power usage.

30. On the other hand, Qwest did provide evidence that the combined actual utilization level for Qwest (63%) and CLECs (24%) is 87% of capacity. This appears to be the best evidence in the record of actual usage as a percentage of capacity. Qwest has acknowledged that these numbers could justifiably form the basis of an appropriate fill factor.[47] Qwest simply averages the numbers, rather than adding them, without explaining why averaging them would be an appropriate reflection of combined average usage.

31. The CLEC Coalition proposed a utilization factor of 80%, based on the assumed utilization factor in the MCI/AT&T collocation model used in the *1540 Docket*.[48] When this fill factor is applied to the stipulated rates, it results in a rate of $7.40 per amp for less than 60 amps and $6.78 per amp for usage of 60 amps or more. The CLEC Coalition also provided evidence that the HAI 5.2a model (used to set loop and transport rates in the *1375 Docket*) assumed a 90% utilization factor for equipment in the asset account that includes DC power plant.[49]

32. The Department recommends a utilization factor of 90% based on the assumption in the Qwest collocation model that the average capacity of power plant in central offices serving collocators is "more than 2100 Amps" and the modeled power plant has a total capacity of 2400 amps. The Department's witness picked the midpoint between 2100 and 2200 amps (2150) and used that number as the numerator, with 2400 amps as the denominator. The resulting ratio is 90%. When this fill factor is applied to the stipulated rates, it results in a rate of $6.58 per amp for less than 60 amps of usage and $6.02 per amp for usage of 60 amps or more.

33. Although utilization factors of 80% or 90% could be justified on the record, as recommended by the CLEC Coalition and the Department, the ALJs

[46] Supplemental Testimony of Million at 5.
[47] Qwest Reply Brief at 15. Until Qwest filed its Reply Brief, it was not clear to the ALJs that these numbers represented total average utilization of Qwest power plant capacity.
[48] Direct Testimony of Starkey-Morrison at 219, 242.
[49] Surrebuttal Testimony of Starkey-Morrison at 158.

recommend a utilization factor of 87% based on Qwest's evidence of actual usage. Application of this fill factor to the stipulated rates produces a rate of $7.05 per amp for less than 60 amps and $6.23 per amp for usage of 60 amps or more. The ALJs recommend that the Commission (1) adopt rates using an 87% fill factor for DC power plant; (2) require the parties to develop jointly a standard DC power plant agreement containing procedures for measuring, reporting, and auditing of power plant usage; and (3) submit the agreement for approval by the Commission.

Collocation Transfer of Responsibility

34. According to Qwest's Elements Description Matrix, "Collocation Transfer of Responsibility" (TOR) is the transfer of a collocation site from a vacating CLEC to an assuming CLEC.[50] There are no physical changes in the circuits associated with this element; a transfer of responsibility is a change in the name of ownership of the collocation and of the circuits terminated at that collocation.[51]

35. As proposed by Qwest, this UNE has two non-recurring charges (NRCs) that were developed using Qwest's Collocation model (Study 9551): a "Transfer of Responsibility Assessment Fee," defined as a charge "for application verification, quote and verification of termination records"; and a "Network System Administration Fee," defined as a charge "to change Qwest records and re-stencil the cabling in the Central Office to reflect the transfer to the assuming CLEC."[52] A third charge, developed using Qwest's NRC model (Study 9540), is a per-circuit charge (one for loops and another for transport), which is intended to capture the cost of changing administrative records from the vacating CLEC to the assuming CLEC.[53]

36. The current, approved prices for these elements were set by stipulation in the *1754 Docket*. They are: Assessment Fee, $1,051.23; Network Administration Fee, $1,652.38; and the per-circuit fee for loops and transport, $1.25.[54]

37. Qwest proposes revising these charges as follows: Assessment fee, $1,301.08; Network System Administration Fee, $1,918.50; and per-circuit charges of $31.72 (for loops) and $39.69 (transport).[55]

38. For the Assessment Fee for one collocation, Qwest's collocation model assumes seven hours of labor to "review for completeness, resolve

[50] Qwest MN Elements Description Matrix, Attachment 4, Rate Element 8.14 (filed Dec. 21, 2006).
[51] Rebuttal Testimony of Denney at 126.
[52] *Id.*, Rate Elements 8.14.2 & 8.14.3.
[53] *Id.*, Rate Elements 8.14.4 and 8.14.5.
[54] Order Approving Stipulation, *1754 Docket* (Aug. 20, 2004).
[55] Qwest MN Cost Comparison Attachment 3 (filed Dec. 21, 2006).

discrepancies, quote preparation, data basing, order tracking/statusing" in the Collocation Project Management Center; two hours of labor for "CPD, space queue, funding/authorization" in the Common Systems Planning Engineering Center; and six hours of labor to "review application/facesheet, accept job in CPD, complete walk-thru packet and submit to engineer, prepare initial inventory form, design job/DWP release, database updates" in Network Engineering & Planning.[56]

39. The Network Systems fee for one collocation was generated based on the assumption of 20 hours for "on site inventory verification of DWP, tagging, ICN processing" in Installation/Vendors; three hours for "meeting with the CO supervisor, receives DWP, schedules job with QTI, distributes ICN and Transfer of Responsibility Inventory Report, MOP, builds work pkg, monitors job" in the Workforce Management Center; and one hour for the state interconnection manager to "coordinate calls, answer questions, conduct Acceptance Walk through with the assuming CLEC," as well as two hours of travel time and site visit time.[57]

40. Qwest's NRC study developed per-circuit costs for loops assuming that customer responsibility for each circuit would be changed based largely on manual processes, requiring approximately 33 minutes for submission of a service request form requiring review for completeness; look-up of billing; verification; determination of critical dates; population of required fields; typing, review and submission of firm order confirmation forms; input order into service order processor; and ensure order is successfully distributed to the systems and is ready for provisioning. The per-circuit costs for transport similarly assume that customer responsibility for each circuit would be processed manually, requiring 42 minutes of time to review and validate the service order and to update the appropriate databases.[58]

41. Based on Qwest's proposed prices, a CLEC that purchases ten collocations with 3,000 loops each would be required to pay Qwest $1 million to change the customer name in its systems.[59] Integra recently purchased Eschelon's 150 collocations with approximately 100,000 circuits. Based on Qwest's proposed prices, it would cost Integra $3.5 million to change the customer name from Eschelon to Integra in Qwest's systems.[60]

42. The CLEC Coalition and the Department object to the amount of manual processing assumed in Qwest's models. They contend that an efficient telecommunications provider would not process these changes individually but would use an electronic batch process that would update Qwest's systems in a fraction of the time estimated by Qwest, without reliance on continuous manual

[56] Qwest MN Collocation Model Cost Study #9551 at 146-48 (filed Dec. 21, 2006).
[57] Qwest MN Collocation Model Cost Study #9551 at 146-48.
[58] Qwest MN Nonrecurring Elements Study # 9540 at 73-75 (version 3.57 dated Dec. 15, 2006).
[59] Rebuttal Testimony of Denney at 126.
[60] Surrebuttal Testimony of Denney at 46.

checks. In addition, they maintain that Qwest has exaggerated the time that even its manual processes would require.[61] The Department contends that development of a batch update system would move the cost structure from a circuit-by-circuit, screen-by-screen manual activity to an efficient, forward-looking automated activity.[62]

43. The CLEC Coalition points out that Qwest proposes a rate of $31.72 to change the name assigned to a two-wire loop, when the stipulated rate to *install* the same loop is $5.83 (a rate that would include assigning a name to the circuit).[63]

44. The CLEC Coalition contends that, after inappropriate manual processes are removed from Qwest's model, the Assessment Fee should be set at $146.01; the Network Systems Administration Fee should be set at $147.87 per request; and the per-circuit fee should be set at $0.77 for loop and $0.87 for transport.[64] Integra (separately from the CLEC Coalition) maintains the Commission should decline to change the current per-circuit fee of $1.25 and should make that rate permanent; or, in the alternative, use the stipulated rate for a resale customer transfer ($3.63 for a manual change, $0.21 for a mechanized change).[65]

45. The Department estimates that if Qwest were to develop an electronic batch process for changing the name of the responsible customer, Qwest would be able to eliminate 36 out of the 40 total hours it allocated for administrative functions for the Assessment Fee and Network Systems Fee.[66] The Department maintains that batch capabilities and application programming interfaces are available and have been for decades and that if Qwest's systems cannot handle mechanized updating of large numbers of records, its processes should not be the basis for a TELRIC rate.[67]

46. The Department contends that Qwest's prices are fundamentally unsound and that its model should be rejected entirely. The Department initially argued that the per-circuit rates should be set at zero until Qwest provides an adequate cost study. In its brief, the Department urges that all currently approved prices (for the Assessment Fee, the Network Systems Administration Fee, and the per-circuit fees) should remain in effect unless and until Qwest proves that a price increase is justified.[68]

---

[61] Direct Testimony of Starkey-Morrison at 301, 316-21; Rebuttal Testimony of Denney at 127-28.
[62] Rebuttal Testimony of Legursky at 26-27.
[63] CLEC Coalition Reply Brief at 38.
[64] Direct Testimony of Starkey-Morrison at 321; Direct Testimony of Ankum-Morrison at Ex. 3 (DVD, Results Summary lines 41-42; Detail Pages 61-64).
[65] Rebuttal Testimony of Denney at 126; Surrebuttal Testimony of Denney at 49.
[66] Surrebuttal Testimony of Legursky at Ex. JWL-12.
[67] Supplemental Testimony of Legursky at 7.
[68] Rebuttal Testimony of Legursky at 28.

47. Qwest initially argued that these TOR charges were necessary in part because:

> As the telecommunications marketplace has evolved, we have seen many business relationships change. These changes include mergers and acquisitions, as well as companies who have simply exited the business. In order for Qwest to provide Collocation in this evolving marketplace, it must maintain proper records and accurate identification of equipment and facilities ownership. The TOR process has enabled all parties to keep true and accurate inventories of their equipment and its ownership through all of these business relationship changes.[69]

48. Qwest also argued that the type of batch processing advocated by the Department would not work on Qwest systems and that it did not make sense to incur the expense of creating a new process.[70]

49. Qwest later maintained that the TOR rate structure was developed based on scenarios where CLECs had abandoned collocations with circuits that were still serving customers. The TOR process was developed to cover the cost of transferring a small number of circuits to an assuming CLEC for a single collocation space, one at a time.[71] Qwest also maintained that a cost docket was not the appropriate venue for addressing development of complex provisioning processes and system development.[72]

50. On December 22, 2008, Qwest filed a petition with the Commission seeking approval of a batch collocation TOR Cost Study.[73] According to the Petition, Qwest proposes a per-circuit charge of $11.36 in this cost model.[74]

51. Qwest now argues that the Commission should accept the rates it proposes in this docket for transfers of single collocations and that it should address the per-circuit charges developed in a batch process in the *1489 Docket*.[75]

52. The ALJs conclude that the prices produced for TOR by the Qwest models in this docket should be rejected. The models' extensive use of time-consuming manual processes appears calculated to exaggerate the cost of what should be a relatively easy task—changing the name of a wholesale collocation customer in Qwest's systems.

---

[69] Rebuttal Testimony of Morris at 4.
[70] Surrebuttal Testimony of Million at 22, 27.
[71] Supplemental Testimony of Million at 7-9.
[72] *Id*.
[73] *In the Matter of Qwest Corporation's Petition for Approval of the Minnesota Batch Collocation TOR Cost Study*, Docket P-421/AM-08-1489, Petition for Approval of Minnesota Batch Collocation TOR Cost Study (Dec. 22, 2008) (*1489 Docket*).
[74] *Id*. at Ex. 1.
[75] Supplemental Testimony of Million at 9; Qwest Initial Brief at 26; Qwest Reply Brief at 17.

53. Qwest has failed to adequately support the time estimates contained in the collocation model, which produced the proposed Assessment Fee and Network Systems Administration Fee. Some of the activities are unnecessary (quote preparation), and most of the other activities should be done electronically rather than manually. There is literally no support for the assertion that it would require 20 hours of labor to tag the circuits and turn them over to the assuming CLEC. Qwest has similarly failed to show that the per-circuit fee produced by its NRC model contains efficient, least-cost, forward-looking assumptions regarding electronic processing of change requests.

54. The Commission has consistently rejected Qwest's assumptions of up to 100% manual processing in its NRC model, as well as its collocation model, and specifically has done so when those models produce extraordinarily high customer transfer charges.[76] The ALJs cannot conclude on this record that Qwests' models produce just and reasonable TELRIC rates for any collocation TOR, regardless of size or number of circuits.

55. The ALJs agree with the Department that it is more reasonable to make the existing rates for collocation TOR permanent than to make the wholesale revisions to Qwest's model that are advocated by the CLEC Coalition. The batch process proposed in the *1489 Docket* may produce a workable model for an electronic process that would impact all of the collocation TOR rates; but the Qwest models provided here are so deficient that they do not support even a starting point for appropriate revision.

56. The ALJs accordingly recommend that the Commission decline to change the rates for collocation transfer of responsibility and instead maintain the currently approved prices: Assessment Fee, $1,051.23; Network Administration Fee, $1,652.38; and the per-circuit fee for loops and transport, $1.25.

Cageless Collocation Without Power

57. The Department asserted in its Direct Testimony that Qwest requires CLECs to order DC power cables to be brought to a cageless collocation, even if the CLEC does not use DC power and the power cables are not hooked up to any CLEC equipment. The Department maintained that this issue arose in two wire center dockets, during which Qwest indicated the issue would more appropriately be considered in this docket.[77]

[76] ALJ Report at 62-67, *1540 Docket*; Order Resolving Cost Methodology, Requiring Compliance Filing, and Initiating Deaveraging Proceeding, *1540 Docket* (approving electronic flow-through rates of 95%-98% in the AT&T/MCI NRC model); ALJ Report ¶¶145, *1375 Docket* (a substantial portion of the direct costs calculated in Qwest's NRC studies are attributable to Qwest's use of inefficient manual processes and contain overstated times, unnecessary tasks, and exaggerated costs); *id*. ¶ 154; Order Setting Prices and Establishing Procedural Schedule, *1375 Docket.*

[77] Department Reply Brief at 13.

58. The potential impact of this practice is illustrated in the following example. The smallest power cable available to CLECs is 20 amps. A CLEC that is required to order a 20-amp power cable would pay an NRC of $1,532.18 and $1.99 per month, as well as monthly charges for DC power plant ($118.40, if charged based on size of the power cables) and $50.80 per month for power usage. The Department contends that Qwest should be precluded from assessing these charges if the collocating CLEC does not request power.[78]

59. Qwest witnesses did not respond in testimony to the Department's proposal.

60. The Department offered a six-point recommendation to provide an alternative for CLECs that do not want to install power cables to cageless collation as follows:

> •Qwest should be required to immediately offer cageless collocation with the option not to have a power cable.[79]
>
> •A CLEC that has never wanted and never used the power in a collocation should no longer be required to pay a monthly charge for power cables, power plant or power usage.
>
> •There should be no non-recurring charge (NRC) for changing to not paying for electrical cables and electricity the CLEC does not use and has not used.
>
> •Qwest currently allows CLECs to add power cables to a cageless collocation that has power cables. These prices should apply if a CLEC wants to add power cables to a cageless collocation that has no power cables.
>
> •A CLEC that (i) has paid a non-recurring charge for a power cable that it is not using and then (ii) stops paying for power should not have to pay again for the nonrecurring costs to engineer the same pathway if (iii) it later wants to begin receiving power at the collocation.
>
> •The offering described above is not a new UNE such that CLECs have to pay Qwest to investigate and develop rates for it. It is a correction of Qwest's current inappropriate offering. The power cable requirement has been inappropriate as a mandatory charge since Qwest began assessing it. Qwest should be ordered to

[78] Direct Testimony of Fagerlund at 42; Department's Post-Hearing Brief at 15.
[79] Direct Testimony of Fagerlund at 42.

immediately develop the appropriate TELRIC-based charge for cageless collocation with the option of no power cable.[80]

61. The CLEC Coalition supports the Department's proposed treatment of cageless collocation without power.[81]

62. Qwest does not dispute that it requires CLECs to purchase power cables for cageless collocation, even if CLECs do not intend to use the cables, but it argues that the Commission should reject the Department's proposal because no CLEC has raised the issue and there is no evidence that any ILEC in the country has been mandated to provide such a product. It maintains that this issue is misplaced in this docket, the purpose of which is to approve Qwest's rates for UNEs. Qwest maintains that the issue whether it should change the terms and conditions of its product offering should be addressed in an interconnection negotiation or a complaint proceeding, not in a generic cost proceeding.[82]

63. In the same docket in which it addressed measured usage of DC power plant, the Illinois Commerce Commission precluded AT&T from assessing a minimum power delivery charge (5 amps when served from the BDFB) on the basis that such a charge is not usage-based and cannot be avoided by refraining from using power.[83]

64. Qwest's argument regarding the scope of this docket is misplaced. This docket includes both Qwest's rates and Qwest's intended application of those rates. The parties have worked for three years to sort out what these rates mean and how they will be applied in various scenarios. As a result, Qwest has filed, and the Commission has approved, a stipulated Elements Description Matrix that describes each element and its proposed application. The Department is correct that this issue—whether Qwest should be required to provide cageless collocation without requiring the purchase of power cables—falls squarely within the scope of this generic docket.

65. The ALJs recommend that the Commission adopt the Department's recommendations concerning cageless collocation without power.

Based upon all the files, records, and proceedings herein, the Administrative Law Judges make the following:

[80] Department's Post-Hearing Brief at 15-16.
[81] CLEC Coalition Initial Brief at 45.
[82] Qwest Initial Brief at 26-27.
[83] Direct of Starkey-Morrison, Ex. 6 at 10-11.

RECOMMENDATION

The Administrative Law Judges recommend that the Commission:

1. Adopt rates for DC Power Plant (using an 87% fill factor) of $7.05 per amp for less than 60 amps and $6.23 per amp for usage of 60 amps or more; require the parties to jointly develop a standard DC power plant agreement containing procedures for measuring, reporting, and auditing of power plant usage; and require the parties to submit the agreement for approval by the Commission.

2. Maintain the currently approved prices for Collocation Transfer of Responsibility, which were set by stipulation in the *1754 Docket:* Assessment Fee, $1,051.23; Network Administration Fee, $1,652.38; and the per-circuit fee for loops and transport, $1.25. The propriety of Qwest's newly proposed per-circuit fee is being addressed in the *1489 Docket*; if it appears the assumptions made in that cost study would impact the Assessment and Network Administration Fees, the scope of the docket could be expanded to include those fees as well.

3. Adopt the Department's recommendations and require Qwest to offer cageless collocation without power.

Dated: May 7, 2009

s/Kathleen D. Sheehy

_____
KATHLEEN D. SHEEHY
Administrative Law Judge

s/Steve M. Mihalchick

_____
STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 and the Rules of Practice of the Minnesota Public Utilities Commission and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 10 days of the mailing date hereof with the Executive Secretary, Minnesota Public Utilities Commission, Metro Square Building, Suite 350, 121 7th Place East, St. Paul, Minnesota 55101-2147. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions of Law and Order should be included, and copies thereof shall be served upon all parties. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the

Administrative Law Judge's recommendation who request such argument with their filed exceptions or reply. Exceptions should be e-Filed with the Commission.

The Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept, reject, or modify the Administrative Law Judge's recommendations and that said recommendations have no legal effect unless expressly adopted by the Commission as its final order.